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CLERK U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF IA

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION**

**PIONEER HI-BRED INTERNATIONAL,  
INC.,**

**Plaintiff,**

**v.**

**DEKALB GENETICS CORPORATION and  
THE MONSANTO COMPANY, and  
NOVARTIS SEEDS, INC.**

**Defendants.**

Case No. **99 - CV - 90666**

Judge

Magistrate Judge

**JURY TRIAL DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT**

Pursuant to Rules 8 and 10 of the Federal Rules of Civil Procedure, Plaintiff Pioneer Hi-Bred International, Inc. ("Pioneer") complains against Defendants DeKalb Genetics Corporation ("DeKalb"), The Monsanto Company ("Monsanto") and Novartis Seeds, Inc. ("Novartis") as follows:

**Nature of the Action**

1. This is an action for patent infringement under 35 U.S.C. § 271 and other relevant provisions of the U.S. patent laws. Through this action, Pioneer seeks damages and a preliminary and permanent injunction preventing DeKalb, Monsanto and Novartis from continuing to make, use, sell, or offer to sell genetically-engineered corn plants that infringe

Pioneer's United States Patent No. 5,990,387 ("the '387 patent") or from actively inducing or contributing to infringement of the '387 patent.

### Parties

2. Plaintiff Pioneer is a corporation organized and existing under the laws of the State of Iowa. Pioneer's principal place of business is located at 400 Locust Street, Des Moines, Iowa 50306. Pioneer is the leading manufacturer and seller of corn seed in the United States.

3. Defendant DeKalb is a corporation organized and existing under the laws of the State of Delaware. DeKalb maintains an office at 3100 Sycamore Road, DeKalb, Illinois 60115. DeKalb manufactures and sells corn seed throughout the United States including in this judicial district. DeKalb is a wholly-owned subsidiary of Defendant Monsanto.

4. Defendant Monsanto is a corporation organized and existing under the laws of the State of Delaware. Its principal place of business is 800 North Lindbergh Boulevard, St. Louis, Missouri 63167. Monsanto manufactures and sells a diversified line of agricultural products, chemicals, pharmaceuticals, and food additives throughout the world. Monsanto is also involved in developing technology used in the genetic engineering of agricultural products, including corn. Since December of 1998, Monsanto has been the sole and complete owner of Defendant DeKalb.

5. Defendant Novartis is a corporation organized and existing under the laws of the State of Delaware. It has its principal place of business at 7500 Olson Memorial Hwy., Golden Valley, Minnesota 55427. Novartis is an agriculture and biotechnology research organization, which develops genetics and produces and sells corn, among other crops.

**Jurisdiction and Venue**

6. This is a case for patent infringement arising under the Patent Laws of the United States, Title 35, of the United States Code § 1 *et seq.* This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).

7. This Court has personal jurisdiction over the Defendants because Monsanto, DeKalb and Novartis each have extensive contacts and substantial ongoing business activities in Iowa, including in this judicial district.

8. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(c) and 1400(b).

**Count I — Patent Infringement**

9. On November 23, 1999, United States Patent No. 5,990,387 ("the '387 patent") entitled "Stable Transformation of Plant Cells," was duly and legally issued. The '387 patent was duly and legally assigned to Pioneer and Pioneer has the right to maintain this action. The '387 patent relates to a method for producing fertile and stably transformed *Zea mays* containing foreign DNA carrying a gene of interest.

10. Defendants DeKalb, Monsanto and Novartis are now infringing either literally or under the doctrine of equivalents, one or more claims of the '387 patent by at least (1) using the microparticle bombardment process to produce a fertile, stably transformed *Zea mays* plant containing foreign DNA carrying a gene of interest; (2) making, selling, or offering to sell fertile and stably transformed *Zea mays* plants containing foreign DNA carrying a gene of interest, produced through the process of microparticle bombardment; (3) actively inducing others to infringe the '387 patent; or (4) contributing to the infringement of the '387 patent by others.

11. Pioneer has suffered and continues to suffer damages because of Defendants' infringement of the '387 patent in an amount to be proven at trial.

12. Unless enjoined, the Defendants will continue to infringe the '387 patent, causing irreparable harm to Pioneer, and to its patent rights, for which there is no adequate remedy at law.

13. Unless Defendants' cease their various acts of infringement, or unless they are enjoined, such continuing acts will constitute deliberate and willful disregard of Pioneer's rights in the '387 patent.

**Prayer for Relief**

**WHEREFORE**, Pioneer respectfully requests the following relief:

A. A preliminary injunction enjoining Defendants and all those in privity with them from infringing, from inducing others to infringe, and from contributing to the infringement of United States Patent No. '387 during pendency of this action;

B. A judgment that Defendants have infringed, induced others to infringe, or contributorily infringed United States Patent No. '387;

C. A judgment that Defendants have willfully infringed, induced infringement and contributorily infringed United States Patent No. '387;

D. A permanent injunction enjoining Defendants and all those in privity with them from infringing, from inducing others to infringe, and from contributing to the infringement of United States Patent No. '387;

E. An award of damages, not less than a reasonable royalty, adequate to compensate Pioneer for Defendants' infringement of United States Patent No. '387;

F. A treble enhancement of those damages, together with interest, for Defendants' deliberate, willful, and egregious infringement of the United States Patent No. '387;

G. An award of attorneys' fees pursuant to 35 U.S.C. § 285;

- H. Costs and expenses in this action; and
- I. Any other relief the Court deems just and proper.

**Jury Demand**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Pioneer requests a trial by jury.

Respectfully submitted,

**PIONEER HI-BRED INTERNATIONAL, INC.**

**Dated: November 23, 1999**

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